IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10265 OF 2004

Vasant Shankar Kulkarni..... ... Petitioner.

Versus

Smt.Padmavati Hanmantrao Joshi & Ors. ... ... Respondents.

Mr. N. V. Gangal for the Petitioner.

Mr. M. M. Thatte for Respondent Nos.1 to 4.

Mr. N. V. Bandiwadekar for Respondent No.5.

CORAM : S. A. BOBDE, J.

DATED : 29TH APRIL, 2005.

P.C.:

Rule.

2. Learned Counsel appearing for the Respondents, waive service. By consent, Rule made returnable forthwith and taken up for final hearing.

3. The Petitioner is aggrieved by the refusal of an order of status quo. According to the Petitioner he is an owner of a plot of land bearing City Survey No. 1412 which is amalgamated with City Survey No.

1413/1. The latter property is about to be auctioned by Respondent No.6 Credit Society for recovery of its dues of Rs.20,77,711/- under the Recovery Certificate for the said Amount obtained by Respondent No.6 under Section 101 of the Maharashtra Co-operative Societies Act. Admittedly, the persons against whom the recovery certificate is obtained i.e. Respondent Nos.1 to 4 borrowers have not challenged the recovery certificate.

4. Even though the Debtors i.e. Respondent Nos.1 to 4 have not challenged the recovery certificate, it appears that the Petitioner, who claims to have entered into an agreement with Respondent No.1 only has taken the present proceedings. That agreement is admittedly unregistered and contains a clause that Respondent No.1 shall not encumber the property for the purposes of a loan or otherwise. Two contentions are raised by the learned Counsel for the Petitioner. Firstly, that the Respondent No.6 are not entitled to auction the Petitioner’s property City Survey No. 1412 which has been amalgamated with City Survey No. 1413/1. According to the Petitioner, this amalgamation has the following consequences:

(a) That his property i.e. City Survey No. 1412 cannot be auctioned and further that since it is amalgamated with City Survey No.1413/1 neither of the property can be auctioned.

5. There is no merit in this contention in view of the auction proclamation produced by the Petitioner himself which shows that what is sought to be auctioned is only City Survey No. 1413/1. In any case the Petitioner did not produce any order of amalgamation before the Court below. The second contention is based on the aforesaid agreement between the Petitioner and Respondent No.1 that the Respondent No.1 will not encumber Petitioner's property. There is no merit in this contention either. The agreement is unregistered and it is only with the Respondent No.1. If inspite of the agreement, the Respondent Nos.1 to 4 have obtained a loan by encumbering the property, which is a subject matter of the agreement, it cannot be said that a stranger to the agreement, such as Respondent No.6, cannot recover the loan amount advanced by it. If at all, the Petitioner may be entitled to sue Respondent No.1 for breach of the agreement.

6. Having regard to the circumstances of the case, I am of view that the courts below have rightly rejected the application for grant of status quo on the basis that the Petitioner appears to have been set up by Respondent Nos.1 to 4 to stall the recovery against them. I find no manifest error of law in this finding and the impugned order.

7. At this juncture, it must be observed that despite opportunity the Respondent Nos.1 to 4 did not come up with the concrete proposal for settlement of the dues of Respondent No.6 before this Court.

8. There is no merit in this petition, which is hereby dismissed.

Sd/-

(S. A. BOBDE, J.)